

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 2806	DATE	10/14/2004
CASE TITLE	USA vs. Jimenez Landscaping Corp.		


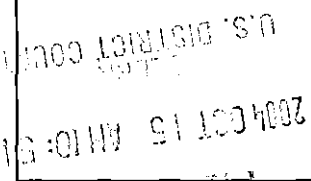

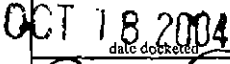

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Order. Accordingly Jimenez' counsel are ordered to file an appropriate motion and supporting memorandum in this Court's chambers on or before October 29, 2004, after which this Court will determine the appropriate course of further proceedings.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.			number of notices	
No notices required.				
<input checked="" type="checkbox"/> Notices mailed by judge's staff.				
Notified counsel by telephone.				
Docketing to mail notices.			10/15/2004	
Mail AO 450 form.			date mailed notice	
Copy to judge/magistrate judge.			SN	
SN	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,                     )  
  )  
                          Plaintiff,             )  
  )  
          v.                                     )     No.   04 C 2806  
  )  
JIMENEZ LANDSCAPING CORPORATION,         )  
et al.,   )  
  )  
                          Defendants.          )

MEMORANDUM ORDER

**DOCKETED**  
OCT 18 2004

Jimenez Landscaping Corporation, Pedro Jimenez and Pedro Jimenez, Jr. (collectively "Jimenez," treated for convenience as a singular noun) have filed their Amended Answer and Affirmative Defenses to the Complaint brought against them by the United States (that filing was occasioned by some basic deficiencies in the original responsive pleading, which this Court had identified in its sua sponte memorandum order issued September 27, 2004). Because the current filing reveals some issues that had not been apparent because of the nature of the original response, this Court once again takes the sua sponte route.

To begin with, both Answer ¶1 and Answer ¶14 challenge the authority of the government and the United States Attorney to bring this action under the auspices of the Clean Water Act. Although Answer ¶12 admits the existence of subject matter jurisdiction in certain respects, the issue posed by those other paragraphs of the Answer should obviously be dealt with at the threshold. Accordingly Jimenez' counsel are ordered to file an

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appropriate motion and supporting memorandum in this Court's chambers (with a copy of course being transmitted contemporaneously to government counsel) on or before October 29, 2004, after which this Court will determine the appropriate course of further proceedings.<sup>1</sup>

All other facial problems presented by the new pleading relate to the ADs. Here are the problems (or questions):

1. ADs 1 and 2 pose no substantive problems as to their content, but like the earlier-mentioned paragraphs of the Answer they ought to be resolved at the outset.

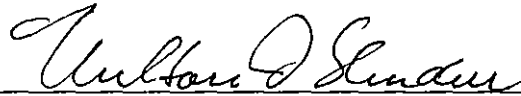
Accordingly the prior directive as to the filing (or nonfiling pursuant to n.1) of a motion and supporting memorandum applies to those subjects as well.

2. Although AD 5 says a bit more than the purely conclusory assertion that had been set out in AD 8 of the original pleading, it is still not sufficiently informative to give government counsel and this Court a real notion of Jimenez' contentions. It is true that notice pleading and not fact pleading is the mode in the federal court system,

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<sup>1</sup> This Court's notes of the last status hearing on October 4 indicate that the next status hearing was set for 9 a.m. November 3 to see whether a possible settlement was in the works. If such a resolution does indeed seem likely, this Court has no desire to compel makework on counsel's part, so that the directive in the text may be ignored. If however such is not the case, the directive should be honored, and the November 3 status hearing will address future requirements.

but something more should be said than AD 5's general reference to "inconsistent communications and actions with respect to Defendant and the alleged wetlands."

A handwritten signature in cursive script, appearing to read "Milton I. Shadur", written over a horizontal line.

Milton I. Shadur  
Senior United States District Judge

Date: October 15, 2004